

HONORABLE RONALD B. LEIGHTON

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT TACOMA

BRIONNA SCHMIDT,

Plaintiff,

v.

ALLSTATE INSURANCE COMPANY,

Defendant.

No. 3:19-cv-05589-RBL

ORDER GRANTING PLAINTIFF'S
MOTION FOR SUMMARY JUDGMENT
REGARDING ALLSTATE'S
AFFIRMATIVE DEFENSES ALLEGING
SETTLEMENT

This matter comes before the Court on Plaintiff Schmidt's Motion for Summary Judgment Regarding Allstate's Affirmative Defenses Alleging Settlement. Having reviewed Schmidt's motion, Allstate's response and Schmidt's reply, the Court makes the following findings:

1. Plaintiff's motion for summary judgment is **GRANTED**.
2. Allstate has the burden of proof on its affirmative defenses. *Duenez v. Dakota Creek Indus. Inc.*, C16-1238-JCC, 2018 WL 488948, at *7 (W.D. Wash. Jan. 19, 2018) (citing *Jones v. Taber*, 648 F.2d 1201, 1203 (9th Cir. 1981)). Thus, Schmidt may obtain summary judgment on Allstate's affirmative defenses by showing that Allstate lacks evidence supporting Allstate's affirmative defenses.

1 *Id.* (citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 322–23, 106 S. Ct. 2548, 2552,
2 91 L. Ed. 2d 265 (1986) and *Nissan Fire & Marine Ins. Co. v. Fritz Cos.*, 210
3 F.3d 1099, 1102 (9th Cir. 2000)). Once Schmidt meets this burden, Allstate must
4 ““come forward with specific facts showing that there is a genuine issue for
5 trial.”” *Id.* (quoting *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S.
6 574, 587 (1986)).

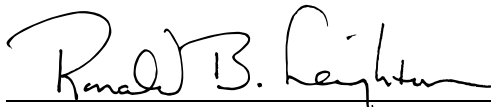
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- 8 3. Allstate’s third, fourth, fifth, and sixth affirmative defenses each require proof
9 Schmidt agreed to settle and release the claims alleged in this lawsuit by
10 accepting Allstate’s pre-litigation partial payment of Schmidt’s insurance policy
11 benefits. *See* Allstate’s Answer, Dkt. No. 12, pp. 3-5 (Allstate’s affirmative
12 defenses asserting “The parties agreed to settle and compromise the case...” and
13 “The Parties...negotiated and settled all claims...”).
- 14
- 15 4. Washington law determines whether Schmidt agreed to release her insurance bad
16 faith claims against Allstate. *Evanston Ins. Co. v. Clark Cty.*, 10-CV-5625 RBL,
17 2012 WL 2068775, at *3 (W.D. Wash. June 8, 2012) (citing *Jeff D. v. Andrus*,
18 899 F.2d 753, 759 (9th Cir.1989)). Under Washington law, a settlement is a
19 contract requiring the parties objectively manifest their agreement. *Id.* (citations
20 omitted).
- 21
- 22 5. Schmidt meets her burden to show the absence of evidence supporting Allstate’s
23 third through sixth affirmative defenses. Schmidt proffers email correspondence
24 establishing Allstate agreed to pay part of Schmidt’s insurance benefits without
25 requesting Schmidt release claims against Allstate. *See* Declaration of McKean J.
26 Evans, Ex. A. Indeed, Allstate knew Schmidt intended to file this lawsuit but

1 nevertheless tendered payment without requesting a release. *Id.* Further, Schmidt
2 points out Allstate's interrogatory answers and initial disclosures identify no
3 facts or documents supporting Schmidt's agreement to release claims against
4 Allstate. *See* Dkt. No. 20-10 (Allstate's discovery responses), p. 6 (response to
5 Interrogatory No. 3); Dkt. No. 18 (Allstate's initial disclosures), p. 4.

- 6
- 7 6. Allstate fails to meet its burden to "come forward with specific facts showing
8 that there is a genuine issue for trial" regarding Schmidt's agreement to release
9 claims against Allstate by accepting Allstate's pre-litigation partial insurance
10 benefit payment. *Matsushita Elec. Indus. Co.*, 475 U.S. at 587. Allstate identifies
11 no objective manifestation of Schmidt's intent to release claims against Allstate
12 by accepting insurance benefits. Absent such evidence, Allstate cannot prove
13 Schmidt settled or released the claims alleged in this lawsuit. *Evanston Ins. Co.*,
14 WL 2068775, at *3 (citations omitted).
- 15
- 16 7. Accordingly, the Court enters summary judgment in favor of plaintiff Schmidt
17 and against defendant Allstate on Allstate's third, fourth, fifth, and sixth
18 affirmative defenses.

19 **IT IS SO ORDERED.**

20 Dated this 13th day of April, 2020.

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24 Ronald B. Leighton
25 United States District Judge
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1 Presented by:

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